

having read it (Rose—R. 1219). In the letter, he used the word “plays” when he intended to have used the word “techniques” (Rose—R. 1222-23). He also testified that the information contained in the letter was obtained from Coach Bryant (Rose—R. 1247). Bryant testified that although he discussed the matter with Dr. Rose, Rose had not accurately reported Bryant’s remarks (Bryant—R. 582-583). Rose did testify that Bryant informed him that he was unable to remember either the September 13, or the Sunday, September 16 call (Rose—R. 1238), a fact repeatedly asserted by Bryant at the trial (Bryant—R. 529, 548, 568, 584).³

2. Georgia Preparations for and Play in the Alabama Game.

On September 13, Georgia Coach John Griffith was preparing his team for its opening game against Alabama on September 22. Georgia, which had an unusual number of sophomores (Griffith—R. 321; Pearce—R. 413), held

3. Subsequent to the trial, petitioner took the depositions of Dr. Rose and his secretary, Mrs. Marian Park, with respect to this letter. At the deposition of Dr. Rose, it was disclosed that Bryant had written a letter to Dr. Rose on February 28, three days after his return to Tuscaloosa from the meeting with Dr. Aderhold, Cook Barwick and Bernie Moore in Birmingham (R. 1429-1430, 1454-1455, 1524-1525) in which Bryant stated, *inter alia*, that he remembered the call to respondent of September 16, 1962. In addition, Dr. Rose admitted that he had been incorrect in testifying at the trial that he had to catch an 8:40 A.M. plane to Washington or that he went to Washington at all on March 6 (R. 1531-1533). He further testified that the letter to Dr. Aderhold had not been written on March 6 but on the preceding day, March 5 (R. 1530-1539). He was unable to remember whether he was in Tuscaloosa on that date (R. 1539) but his expense records showed no trips on March 4, 5 or 6 (R. 1539).

Mrs. Park testified that the March 6 letter to Dr. Aderhold was dictated slowly and thoughtfully by Dr. Rose as the fifth in a series of 32 letters, which took approximately an hour and a half to dictate (R. 1583-1584). Dr. Rose’s correspondence file was found to contain a carbon copy of what appeared to be an earlier draft of the letter of March 6, dated March 5, which differs slightly from the March 6 letter (R. 1429, 1451). Although Mrs. Park testified that no draft had been prepared, her stenographic notes corresponded more nearly to the March 5 draft than to the letter of March 6 (R. 1581-1583).

secret practices behind a walled practice field, from which the public was excluded (Inman—B. 405; Pearce—R. 413). Respondent, as Athletic Director, was a frequent visitor at these practices (Inman—R. 405; Pearce—R. 444; Gregory—R. 628). As an additional safeguard for the secrecy of the plays, the Georgia team was divided into three groups—the ends, the backs and the linemen. Only that portion of each play which pertained to their respective positions was distributed to each group, so that should a player's copy of the plays fall into the wrong hands, it would be useless without the other two sections. Only the quarterbacks had a complete picture (Pearce—R. 414).

Georgia's offense consisted of two basic formations, the "slot right" with the right end split 3 yards from the tackle (Griffith—R. 306-307; Inman—R. 391; Pearce—R. 432), and the "pro set," in which the slot was also to the right, but with the left end split 15 yards (Griffith—R. 306-307; Inman—R. 390; Pearce—R. 434). The Georgia staff considered the width of the slot to be of major importance to the success of the formation and practiced it diligently in order to make sure that the ends lined up exactly the right distance (Pearce—R. 432). Advance knowledge of the distance the Georgia ends would be split would be of tremendous advantage to an opponent (Inman—R. 391-396; Pearce—R. 432). End Mickey Babb denied that the split was a fixed distance, testifying that he varied his split according to field position (R. 741-742).

Georgia's passing attack was built around end Mickey Babb, the team's leading pass receiver, who was to be used as the split end in all of Georgia's offensive formations (Griffith—R. 316), and as quarterback Larry Rakestraw's primary target (Pearce—R. 434). When Georgia neared the goal line, it was usually planned that Babb run a "hook" pass pattern (Griffith—R. 356).

Defensively, Georgia planned to use a "loose-six" defense against Alabama, in which Georgia would drop its ends off and contain with its tackles (Griffith—R. 317). Attempts were being made to correct the tendency of

Georgia safety-man Brigham Woodward to commit himself too fast on pass defense (Griffith—R. 311; Pearce—R. 429).

Alabama entered the September 22 game a 14 to 17 point favorite (Pearce—R. 415; Graham—R. 513). Georgia gained probably less than 100 yards offensively, which is bad (Griffith—R. 381), probably completed 11 out of 18 or 19 passes (R. 381-382), and never got closer to the Alabama goal line than the 40-yard line (R. 382). The final score of 35-0 shocked and stunned Coach Griffith (R. 376). He denied that his players had taken "a frightful physical beating" (R. 376).

During the game, according to Griffith, Georgia players came to the sidelines and said to him:

"They know what we are running; they are even calling out our plays!"

"What are we going to do?" (R. 377)

As already noted, Coach Bryant testified that Alabama was not properly prepared for one formation Georgia used during the game (R. 542-545). This was corroborated by Alabama players Jordan (R. 711) and Sharp (R. 585-586). Bryant also stated that Alabama made no significant changes in its defensive plan between September 13 and the day of the game, September 22 (R. 547). Pell testified to the same effect (R. 595-596), and added that during the period from September 1 to September 22, Alabama did not concentrate on any particular two or three formations (R. 600). Sharp testified that during the game he heard no player on Alabama's team call out such things as "you can't run eighty-eight pop on us" (R. 589).

Charley Trippi, Georgia's assistant coach in charge of offense, who called ninety percent of the plays used by Georgia from the press box (R. 722), said he saw nothing indicating that Alabama knew anything about what Georgia was going to do in the game; the only thing he saw was that Alabama blocked, tackled and ran harder than Georgia did (R. 726).

Respondent also produced three Georgia players who played in the game, Robert Wallace Williamson (R. 733), Mickey Babb (R. 740) and Brigham Everett Woodward (R. 756). Woodward testified that Georgia players in that game did not take a frightful physical beating as stated in the article (R. 758). Williamson testified that there was nothing done or said by the Alabama players during the game which indicated that they knew what Georgia was going to do (R. 734). He also said that the statement in the article that the Georgia players took a frightful physical beating was not true (R. 735). Babb testified that the Georgia players did not take a frightful physical beating (R. 744) and that as a player in the game he did not feel that their moves were being analyzed by the Alabama team (R. 745). He specifically denied having told the Post's source, Furman Bisher, that the Alabama players had taunted them by yelling out "you can't run eighty-eight pop on us," as he was quoted in the article (R. 745).

3. Evidence by Football Coaches and Players on Value of Burnett Notes.

None of the football authorities called as witnesses were examined on the value of the information which Burnett testified he overheard respondent give Bryant. The testimony of all such witnesses was directed to the Burnett notes.

In head coach Johnny Griffith's opinion, the Burnett notes contained meaningful information for an opposing coach about the Georgia team, the most important of which was the two formations Georgia intended to use in the Alabama game (Griffith—R. 307-317). Under cross-examination, he stated that a good number of the notes were inaccurate and didn't apply to anything Georgia had, and that the only two things he saw in the notes that might have been of benefit to an opposing coach were the two formations (R. 386-387). The knowledge that only two specified formations would be used by Georgia would free practice

time which would otherwise have been devoted to preparation against other formations Georgia might possibly use (Griffith—R. 317). Georgia assistant coaches, Inman and Pearce, were of the opinion that the information contained in the notes could have been helpful to Alabama (Inman—R. 394-395; Pearce—R. 411-437). Assistant coach Gregory, testifying for respondent, maintained that the notes were either wrong or meaningless (R. 622-632). On cross-examination he admitted signing a letter to the Assistant Attorney General of Georgia, dated March 26, 1963, stating that, “. . . it is my opinion . . . that if such information was given to Coach Bryant before the opening game of the season, it contained vital and important information with respect to the offensive and defensive plays, patterns and formations that could have been of value to the University of Alabama football team, and could have effective [sic] the outcome of the game on September 22, 1962” (R. 634). He testified he signed the letter because he was afraid his job would be jeopardized if he did not (R. 636-638).

Bryant denied that the Burnett notes reflected any information that would have been helpful to him (R. 551-563). While Bryant testified there may have been a couple of things in Burnett's notes that he would rather have known than not known (R. 572), the things he would be interested in about another team would be their game plan—what they planned to do in certain field positions and on specified downs (R. 573-575).

Charles Trippi testified that the notes produced by Burnett were baseless and that the first thing that he would do with the notes would be to tear them up (R. 723-24). He further stated that based upon his experience as a college football player, as well as a professional football player, the outcome of a college football game definitely cannot be pre-arranged, fixed or rigged without the participation of the players, or some of the players, themselves (R. 727). Trippi further testified:

“I have studied these (Burnett) notes, and I believe I expressed my opinion of these notes when they

first were announced; and I still contend there's nothing in here to substantiate anything of value in football planning." (R. 728).

He further stated:

"We give more information to the press every week to promote the game than is being expressed in these notes right here." (R. 727)

Leroy Jordan testified that in his opinion even if an opposing coach knew what formations were going to be employed by the offensive team, such information would be of no value to the coach (R. 713). With reference to the Burnett notes, he stated that there was nothing in them which the University of Alabama specialized in defensively before its game with the University of Georgia (R. 715-16). He further testified that in his opinion as a football player, the outcome of a football game cannot be rigged or fixed without participation of the football players themselves (R. 716). He stated further that in his opinion there is no way that two coaches can rig or fix the outcome of a football game without the players' knowledge (R. 717).

Alabama player Pell testified that in his opinion for Alabama to have known in advance formations and plays which any team such as the University of Georgia was going to use would be of no advantage since they would have needed to know almost a thousand other things before they could have used any such information (R. 601-02). Witness Pell also testified that in his opinion as a football player a football game cannot be rigged or fixed without the individual players knowing about it and without the individual players participating in the rigging and fixing (R. 604).

Also testifying for the respondent was William C. Hartman, Jr., former Assistant Coach of the University of Georgia (R. 973). He testified that in his opinion the information contained in the Burnett notes would not be of any assistance at all to the University of Alabama in pre-

paring for its game with the University of Georgia, that the information concerned nothing more than basic "T" formations, and that the University of Alabama and everyone else had all that information in their own offense. He stated that the University of Alabama must have previously seen at least three or four movies of Georgia games showing the same information (R. 982-983).

4. The Investigation, Preparation and Publication of the Article.

News of the Butts-Bryant affair reached Roger Kahn, sports editor of the Post, in New York on Tuesday, February 10, 1963 (Kahn—R. 950). The information had come from an attorney in Birmingham, Alabama, Roderick Beddow, who was representing petitioner in a libel suit brought there by Bryant against petitioner and Furman Bisher (R. 497-498). Kahn selected Frank Graham, whom he knew to be an experienced sports writer, to go to Atlanta to investigate the matter (Kahn—R. 952). If, in Graham's judgment, there was a story there, he was to proceed (Kahn—R. 952). The Post was interested in getting to the truth of the entire matter (Kahn—R. 957). Graham was to move with all deliberate speed (Kahn—R. 956) to do a complete investigation, without any time limitation (Kahn—R. 957). He was to go to Atlanta and make a thorough investigation to get all available facts (Kahn—R. 952-53), an affidavit from Burnett (Kahn—R. 954), and, if possible, a copy of his notes (Kahn—R. 954). Kahn cautioned Graham to be careful, that this was a big story (Kahn—R. 957).

Graham arrived in Atlanta late on the night of Wednesday, February 20th (Graham—R. 498). On the following morning, he met Beddow and they went to the office of Pierre Howard (Graham—R. 497-499). Shortly after their arrival at Howard's office, the group was joined by Milton Flack. Howard and Flack recounted the story told by Burnett (Graham—R. 499-500). One of the things they thought Burnett had said was that respondent told Bryant that

Georgia quarterback Larry Rakestraw tipped off what he was going to do by the way he held his feet (Graham—R. 871-72).² They also filled Graham in on the background of the Georgia football situation as they knew it (Graham—R. 500). Howard told Graham that in 1961, respondent had resigned as head coach of the University of Georgia after prominent University alumni had soured on him (Graham—R. 879), and since that time, respondent had been outspokenly bitter about his removal (Graham—R. 879-80).³ Graham was also told by Flack and Howard that respondent had lost approximately \$80,000 in a Florida orange grove speculation (Graham—R. 880-81). He was also told that it was rumored that respondent had entered a hospital in Athens (Graham—R. 906-907). Bisher later informed Graham that the rumor was groundless (Graham—R. 907).

At 7:00 P.M. on the evening of February 21, Burnett, Howard and Flack met Frank Graham at his room in the Heart of Atlanta Motel and Burnett told his story (Burnett—R. 233). After relating what had transpired at the meeting with the officials of the University earlier that day (Graham—R. 506). Burnett told Graham of the call which he had overheard between respondent and Bryant, as it was subsequently reported by Graham in the Post article (Graham—R. 521-27), except that the item about Rakestraw was not given Graham by Burnett (Burnett—R. 241).

On the following morning, Graham again met Burnett at Howard's office (Graham—R. 508). Graham asked

2. Graham learned of the error after publication of the article, when Burnett advised a representative of the Post that he did not recall overhearing this statement (Graham—R. 872).

3. About eighteen months after respondent's resignation as coach, his close friend, Bill Hartman, began to hear reports that respondent was making speeches in which he was openly caustic of the entire Georgia coaching staff (Hartman—R. 990-91; Bradshaw—R. 1087). Respondent's antagonism toward the University increased to such extent that he made critical remarks every time the Athletic Board met (Driftmier—R. 1089-90). Reports of respondent's repeated criticisms of Coach Griffith and his staff also reached President Aderhold (Aderhold—R. 1114).

Howard for a copy of Burnett's notes (Graham—R. 510-11). Howard promised to obtain a copy for him from Cook Barwick, and rush them to Graham by air (Graham—R. 510-11); however, this was never done (Graham—R. 510-11). At Graham's request, an affidavit was prepared and signed by Burnett (Graham—R. 494-508).

Frank Graham spent Saturday morning at the Atlanta Public Library, studying the newspaper reports of events leading up to and following that Georgia-Alabama game on September 22 (Graham—R. 513). George Burnett and Milton Flack drove Graham to the airport and spent about three and a half hours with him (Burnett—R. 236; Graham—R. 515). Before leaving Atlanta, Graham read in the Atlanta Journal that respondent had resigned as Athletic Director (Graham—R. 879).

On Monday, February 25, Roger Kahn, sports editor of the Post, was contacted in New York by Furman Bisher, sports editor of the Atlanta Journal (Kahn—R. 966). Bisher told Kahn that he had a major story involving colossi of southern football (Kahn—R. 966-67). Kahn called Graham (Graham—R. 492) and arranged a meeting with Bisher at his hotel later that evening (Graham—R. 493). Bisher told Graham substantially what Graham had learned in Atlanta, much of which was contained in the affidavit which George Burnett had signed for the Post (Graham—R. 494), information which Bisher had apparently learned from Cook Barwick (Graham—R. 494).

Kahn knew Bisher to be a good reporter (Kahn—R. 966). Because he had more entrees to people in Atlanta, it was decided that Bisher would complete the investigation (Graham—R. 494, 517). Bisher was to accumulate every bit of useful information, particularly in talking to University authorities (Graham—R. 912), and forward it to Graham. Kahn suggested that films of the game be reviewed, but believed Bisher said they were unavailable (Kahn—R. 970). Bisher testified he had no recollection of a discussion about viewing of the films at that meeting,

but there might have been and he would have said it would have been a very good idea. (R. 1025-1026).

On the following Friday, March 1, 1963, Bisher called Graham in New York, stating that he had talked to people at the University and gave Graham quotes from Mickey Babb (Graham—R. 893-94), the trainer, Sam Richwine (Graham—R. 895), and Coach Griffith (Graham—R. 517-18, 894-95; Kahn—R. 972). Babb and Richwine denied at the trial having made the statements attributed to them by Bisher (Babb—R. 745, Richwine—R. 752). Bisher specifically quoted Griffith as having said that "Nobody ever used that name for that play but one man" (Graham—R. 902) and that he didn't move for an hour after reading Burnett's notes (Graham—R. 904). Griffith did not deny these facts. Griffith was also quoted by Bisher as having said "I never had a chance." After publication of the article, Griffith denied having made such a statement (Griffith—R. 372; Kahn—R. 972). According to Graham, Bisher supplied additional background information for the article (Graham—R. 878) and reaffirmed that respondent had been very bitter about his removal as head coach (Graham—R. 878). Bisher denied giving Graham the latter piece of information (R. 1027-1028). Bisher told Graham that records of Southern Bell confirmed the September 13 call (Graham—R. 909). The following week, an advance copy of the story was sent to Furman Bisher, who made no corrections or suggestions (Graham—R. 513).⁴

Frank Graham wrote the article and submitted it to Davis Thomas, managing editor of the Post (Thomas—R. 1021). Because of the nature of the charge made in the article, the Post made sure that great care had been exercised (Thomas—R. 1015) and that every significant source of information had been checked (Thomas—R. 1014, 1021) in advance of publication. In approving the article for publication, Thomas attached great significance to the affi-

4. Furman Bisher was paid \$1,000 by the Post for his investigation (Pl. Ex. 10, R. 1379).

davit executed by Burnett, which supported his belief in the truth of the statements contained in the article (R. 1015). Thomas took into consideration the fact that Burnett had been arrested and convicted of passing bad checks (R. 1016). The Post knew that the University had made a full investigation of Burnett (Graham—R. 911) and that the Burnett notes had been convincing to Griffith and University authorities (Thomas—R. 1024).

The article was then submitted to Clay Blair, Jr., Editor-in-Chief of Curtis Publishing Company, for his approval. The article was approved for publication only after Blair was satisfied that the statements contained in the article had been thoroughly checked as to their truthfulness and accuracy (Blair—R. 945-46).

Blair was interested in changing the "image" of the Post (R. 940); he had said in an interview with Newsweek magazine, in November, 1962, that he intended to "restore the crusading spirit, the sophisticated muckraking, the expose in mass magazines" (R. 943). Although he said that by adding the word "sophisticated" he intended to alter the most common usage of the term "muckrake", the term "sophisticated muckraking" was not clearly defined by him (R. 940-944). On January 15, 1963, he had circulated a congratulatory memorandum to his staff which stated (facetiously, according to his testimony) (R. 939) that "the final yardstick" of this policy was that "we have about six lawsuits pending, meaning that we are hitting them where it hurts, with solid, meaningful journalism" (P. 6, 1376, R. 946-47). The number of lawsuits stated was inaccurate (R. 947). He also described the issue containing the article here involved as "a step in the right direction", adding that with this issue "we have gone twenty-five percent toward the goal of the magazine that I envision" (R. 940). Both he and Davis Thomas knew that when the editorial accompanying the article stated, "But careers will be ruined, that is sure," it was applicable to respondent (Blair—R. 945, Thomas—R. 1014).

Prior to publication of the article, Curtis' advertising revenues had been falling drastically (R. 935-936). Blair was not asked if this was the reason for the editorial policy he adopted.

Under date of March 11, 1963, seven days before the publication date of March 18, respondent's counsel sent a telegram and a letter to petitioner stating without specification, that the proposed content of the article was false (R. 22-23, 1023). Sometime during the week prior to publication, respondent's daughter called Blair and, without claiming the article to be false, requested him not to publish it (R. 947-949).

Following the publication of the article, a demand for a retraction was made by the plaintiff and ignored by the Post (R. 22-23, 26-27).

IN THE
Supreme Court of the United States
OCTOBER TERM 1966

JOHN F. DAVIS, CLERK

No. 150

THE ASSOCIATED PRESS,
—against—
EDWIN A. WALKER,
Petitioner,
Respondent.

**SUPPLEMENT TO PETITION FOR
WRIT OF CERTIORARI**

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No. 150

**SUPPLEMENT TO PETITION FOR
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The Petition herein was filed on May 18, 1966. Thereafter, on August 15, 1966, the Supreme Court of Colorado, in still another of Respondent's libel actions against Petitioner, held squarely that the doctrine of *New York Times v. Sullivan* is applicable to Respondent, General Walker, upon the very facts involved in the present case. *Walker v. Associated Press*, Colo. P. 2d. In its unanimous opinion (with one Justice not sitting), the Colorado court said:

"The problem is whether the rule announced in the *New York Times Company* case, where a public official was involved, applies with equal force to a public figure who has voluntarily thrust himself into the vortex of the public discussion of an issue which is of pressing public interest and concern. Plaintiff in the instant case is not a public official, but he admittedly is a public personage who did voluntarily

go from his home in Texas to Mississippi at the time when James Meredith, a colored person, was being enrolled in the University of Mississippi, and under such circumstances he most certainly did thrust himself into the vortex of the discussion of a matter of great public concern.

"We now hold that the rule of *New York Times Company v. Sullivan, supra*, applies to the instant controversy to the end that even though the news release be libelous per se, plaintiff still cannot recover unless he is able to show actual malice, as defined in the *New York Times Company* case, on the part of Associated Press."

Since the decision of the Supreme Court of Colorado is not yet reported, the full text of the opinion is annexed hereto as Appendix 1. The new *Walker* decision is in direct conflict with the rulings of the courts below in the instant case, and thus constitutes an additional reason for the granting of the writ.

Respectfully submitted,

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